

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO
VILLATORO, MISAEL ALEXANDER MARTINEZ
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA
MOREIRA and MATEO UMAÑA individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW,
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014
(PAE)(SDA)

**DECLARATION OF GERSON JUAREZ IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Gerson Juarez, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.
2. I am a resident of Brentwood, New York, in Long Island.
3. I currently work for ELM as a laborer. I have been working for ELM since approximately 2016 or 2017.
4. My duties as a laborer include, but are not limited to, planting trees and performing general landscape work.
5. I also drive a company vehicle once in a while, on an as-needed basis. I picked up a company vehicle at the 25 Newton Place, Hauppauge, New York ("Hauppauge facility") and

drove employees into jobsites. More often than not, I received rides to work as a passenger.

6. At times, in the morning, I put materials in the company vehicle, and at the end of the day, I sometimes cleaned out the vehicle. I am paid for these work hours at the hourly overtime wage rate.

7. I received drive time pay for all hours I spent driving at \$20.00 per hour.

8. I worked at jobsites throughout New York City, such as Queens, Brooklyn, Bronx, and Manhattan.

9. I typically depart to jobsites at around 4:30 a.m. and arrive at the jobsites at approximately 6:00 a.m. Depending on the traffic, the average time it took for me to get to the Hauppauge facility from the jobsite is four (4) hours.

10. I work six (6) days per week in the summer and less in the winter. I typically work eight (8) to nine (9) hours each day.

11. Whenever I worked over forty (40) hours per week, ELM paid me an overtime hourly rate.

12. My primary language is Spanish. On January 25, 2023, Luis Lopez CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in my primary language.

13. This declaration was prepared by counsel for Defendants in the action based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Date: January 25, 2023



Gerson Juarez